

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The Burlington Northern and Santa Fe Railway Company, :
Mulberry Grove Township Road District, and the State of Illinois, :
Department of Transportation. :
: T04-0063
Stipulated Agreement regarding improving public safety at the :
Iron Gate Trail highway-rail grade crossing of the Company's :
tracks located near the City of Smithboro, Bond County, Illinois, :
designated as crossing AAR/DOT 069148B, milepost 91.06-Y. :

ORDER

By the Commission:

On June 11, 2004, July 1, 2004, August 2, 2004, and August 11, 2004, the Staff of the Illinois Commerce Commission, The Burlington Northern and Santa Fe Railway Company, Mulberry Township Road District, and the Illinois Department of Transportation, respectively, executed Stipulated Agreement Number **1105** according to the provisions of Section 18c-7401 of the Illinois Commercial Transportation Law. The Stipulated Agreement, which is appended hereto, provides for safety improvements at the Iron Gate Trail highway-rail grade crossing of The Burlington Northern and Santa Fe Railway Company's track located near Smithboro, Bond County, Illinois. The Stipulated Agreement contains estimates of cost to accomplish the improvements and a division of cost among the parties.

The Commission, having given due consideration to the Stipulated Agreement, finds that:

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) The physical characteristics of the subject highway-railroad grade crossing, rail and highway volumes and speeds are indicated on Exhibit A, of the Stipulated Agreement, appended hereto;
- (3) The Parties agree that in the interest of public safety the improvements as set forth in Section 2 of the Stipulated Agreement, appended hereto, should be performed;
- (4) The cost for the proposed improvements should be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, in accordance with the Law;

- (5) It is fair and reasonable that the Secretary of the Illinois Department of Transportation through the Grade Crossing Protection Fund of the Motor Fuel Tax Law, and The Burlington Northern and Santa Fe Railway Company be directed to bear their respective portions of the actual cost of the proposed improvements as set forth in Section 5 of the Stipulated Agreement, appended hereto.
- (6) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.
- (7) Public Act 93-0604 (effective November 21, 2003), which amends 18c-7401 (Safety Requirements for Track, Facilities, and Equipment) of the Illinois Commercial Transportation Law, requires installation of temporary STOP signs whenever the Commission authorizes the installation of automatic flashing light signals or automatic flashing light signals and gates at public highway-rail grade crossings. The temporary STOP signs shall remain in place until the luminous flashing signal or crossing gate devices have been installed. The rail carrier is responsible for the cost of the installation and subsequent maintenance of any required temporary STOP signs.

IT IS THEREFORE ORDERED that the terms of Stipulated Agreement Number **1105** executed by the Staff of the Illinois Commerce Commission, The Burlington Northern and Santa Fe Railway Company, Mulberry Township Road District, and the Illinois Department of Transportation on June 11, 2004, July 1, 2004, August 2, 2004, and August 11, 2004, respectively, be, and they are hereby accepted and required to be met by the aforesaid parties.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company be, and it is hereby, required and directed to proceed immediately in performing its work as set forth in Section 2 of the Stipulated Agreement, appended hereto, and shall complete its work within one (1) year from the date of this Order.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be divided among the parties and the Grade Crossing Protection Fund of

the Motor Fuel Tax Law, as set forth in Section 5 of the Stipulated Agreement, appended hereto.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall, within 30 days from the date of this Order, install temporary STOP signs at the Iron Gate Trail highway-rail grade crossing. The temporary STOP signs shall remain in place until the automatic warning devices authorized for installation by this Order are installed and operational. The Burlington Northern and Santa Fe Railway Company shall be responsible for the cost of the installation and subsequent maintenance of the required temporary STOP signs.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall furnish a written statement with the Director of Processing and Information, of the Commission's Transportation Bureau, indicating that the temporary STOP signs have been installed at the Iron Gate Trail grade crossing.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall file Form 3 of 92 Illinois Administrative Code 1535 of this Commission, one for each location, showing details of the automatic warning devices herein required and shall receive approval thereof by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that all bills for expenditures authorized for reimbursement from the Grade Crossing Protection Fund shall be submitted to Fiscal Control Unit of the Illinois Department of Transportation's Bureau of Local Roads and Streets, Main Office, 2300 South Dirksen Parkway, Springfield, Illinois, 62764. The Illinois Department of Transportation shall submit a copy of each bill to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures shall be clearly marked "Final Bill". All bills shall be submitted to the Department no later than twenty-four (24) months from the date of this Order. Authorization for reimbursement from the Grade Crossing Protection Fund shall expire twelve (12) months after the completion date specified in this Order. The Department shall, at the end of the 24th month from this Order date, de-obligate all residual funds accountable for installation costs for this project.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the progress it has made toward completion of the work herein required. Each progress report shall include the Commission Order Number, the Order Date, the project completion date as noted in this Order, crossing information (Inventory Number and Railroad Milepost), type of improvement, and

project manager information (the name, title, mailing address, phone number, facsimile number and electronic mail address of the Railroad employee responsible for management of the project.)

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall submit to the Director of Processing, Transportation Division of the Commission within five (5) days of the completion of the work herein required, a 6180.71 – U. S. DOT Crossing Inventory Form as a notice of said completion.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the status of expenditures of the total project and percentage of completion of the project. If the project is behind schedule the report(s) must also include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that, any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that, any person requesting an extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that, requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that, the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests For Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that, subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Administrative Review Law.

By Order of the Commission this 9th day of September, 2004.

Howard C. Husley ₂

Chairman

JUDGE
SECTION CHIEF <i>MES</i>
<i>[Signature]</i> ORDERS SUPERVISOR